

Notice of Allowability

Application No.

10/698,911

Examiner

Karen E. Toth

Applicant(s)

GOUGH ET AL.

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the remarks filed 12 November 2006.
2. ☒ The allowed claim(s) is/are 58-82.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Stacy Taylor on 14 December 2006.

The application has been amended as follows:

In the specification, line 9 of page 9 through line 8 of page 11, and line 3 of page 41 through line 7 of page 43 have been deleted for clarity, since they refer to figures not included with the present application.

Allowable Subject Matter

2. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to anticipate or make obvious the structure of claims 58, 61, 62, 74, 77, and 78, including, *inter-alia*, an analyte sensor sensing primary and secondary composite signals, with the application of signal adjustment coefficients to the secondary composite signal in order to compensate for detector failure, drift,

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environmental variations between secondary sensors, and environmental similarities between primary and secondary detectors. Gerber (US Patent Application Publication 2002/0161286) in view of Miller (US Patent 4748562) discloses an analyte sensor with primary and secondary composite sensors that are responsive to confounding phenomena, but does not disclose applying compensatory coefficients to the secondary composite signal.

The prior art of record fails to anticipate or make obvious the structure of claims 59, 65, 67, 69, 75, and 81, including, *inter-alia*, an analyte sensor where weighting factors are applied to determine a primary composite signal. Gerber in view of Miller discloses an analyte sensor sensing a primary composite signal, but does not disclose applying weighting factors to determine the signal.

The prior art of record fails to anticipate or make obvious the structure of claims 60, 66, 68, 70, 73, 76, and 82, including, *inter-alia*, an analyte sensor where signal adjustment of primary composite signals is performed using temporal factors. Gerber in view of Miller discloses an analyte sensor that senses primary composite signals, but does not disclose adjusting the signals using temporal factors.

The prior art of record fails to anticipate or make obvious the structure of claims 63, 64, 71, 72, 79, 80, including, *inter-alia*, an analyte sensor that senses primary composite signals and measures perfusion as a confounding factor in the measured analyte concentration. Gerber in view of Miller discloses measuring primary composite signals with an analyte sensor, but does not disclose measuring perfusion as a confounding factor affecting the analyte concentration.

Response to Arguments

3. Applicant's arguments, see remarks filed 25 October 2006, with respect to claims 1-57 have been fully considered and are persuasive. The rejection and objection of claims 1-57 have been withdrawn.

Conclusion

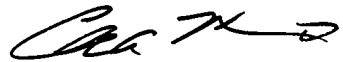
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen E. Toth whose telephone number is 571-272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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Charles A. Marmor, II
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